



Accotink Flow TMDL **Virginia's Legal Issues**

Accotink TAC
Fairfax, Virginia
August 18, 2009



Code of Virginia

- **“The quality of state waters is affected by the quantity of water and it is the intent of the Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses and public water supplies for human consumption.”**
- **(Code 1950, § 62-9.2; 1954, c. 330; 1968, c. 659; 1989, c. 410.)**

Virginia Statutory Authority

- Does VADEQ have legal authority to develop a TMDL for stormwater?
- Informal opinion from the Virginia Attorney General's Office
 - State Water Control Board has the authority under state law to regulate flow directly
 - without resort to TSS surrogate

AG's Suggestion

- DEQ should amend regulations to broaden TMDL definitions to include regulating flow
- Plan to amend Water Quality Management Planning Regulation to add definition
- DEQ's Notice of Intended Regulatory Action to be posted August 31st in Virginia Register
 - public meeting on September 30th

Change in Lead for Accotink TMDL

- Code of Virginia directs DEQ to develop TMDLs and plans to implement TMDLs
- DEQ has not promulgated TMDL regs
 - instead we operate under federal TMDL regs contained in 40 CFR
- EPA agreed to take lead to provide time for DEQ's reg amendment to include flow
 - EPA has led a number of other Virginia TMDLs

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